

Appl. No. 10/725,248
Docket No. P145
Amdt. dated March 23, 2009
Reply to Office Action mailed on December 22, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1, 2, 7 – 15 and 19 – 53 are pending in the present application. No additional claims fee is believed to be due. Claims 1, 9, 14, 20 and 21 have been amended. Claims 2, 8, 15, and 19 have been canceled. Claims 13 and 24 – 53 have been previously withdrawn.

Rejection Under 35 U.S.C. § 112

Claims 1, 2, 7 – 12, 14, 15, and 19 – 23 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse this rejection.

The Office Action states that the “metes and bounds of claim 1 and 14 are rendered uncertain by the phrase ‘wherein the composition is a gravy which is adapted for use by a companion animal’ because it is unclear as to what Applicants mean by ‘adapted for use by a companion animal.’” Applicants respectfully refer to the specification, page 3, lines 29 – 31 which disclose that the “compositions herein are adapted for use by a companion animal. In this respect, as will be well-understood by the ordinarily skilled artisan, the primary use of the compositions described herein is for companion animal use and the compositions are therefore formulated as such.” Applicants submit that one of skill, upon reading the written description, would readily understand the language of the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Cheuk

Claims 1, 2, 7 – 12, 14, 15, and 19 – 23 have been rejected under 35 U.S.C. § 102 as being anticipated by Cheuk, et al. (US Publication No. 2003/0099759) (“Cheuk”). Applicants respectfully traverse this rejection.

Cheuk is directed to:

[a] canine pet food composition comprising a meat based material having an essentially solid mass assuming the shape of the container in which it is

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packed, said pet food having meat particles with a moisturized appearance and visually recognizable discrete food particles upon slicing the pet food mass after departure from the solid container.

Abstract. Cheuk, however, fails to teach each and every element of the claims.

Claim 1 is directed to, *inter alia*, a composition comprising from about 1% to about 10% of total fermentable fiber, by weight of the composition, wherein the composition is a gravy which is adapted for use by a companion animal. Claim 14 is directed to, *inter alia*, a composition comprising from about 1% to about 10% of a fermentable fiber selected from the group consisting of beet pulp, short chain oligofructose comprising 1-kestose, nystose, and 1F-beta-fructofuranosylnystose, and mixtures thereof, wherein the composition is a gravy which is adapted for use by a companion animal. As best understood by Applicants, Cheuk fails to teach the gravy compositions as claimed. Cheuk discloses a meat protein source (component a), a grain mix (component b) and a non-chemically modified starch, natural starch and/or carbohydrate/water component (component c). Paras. [0036], [0040], and [0043]. As best understood by Applicants, Cheuk fails to teach a composition comprising from about 1% to about 10% of total fermentable fiber wherein the composition is a gravy. Applicants respectfully refer to the specification page 7, lines 1 – 12 which describes a gravy as a liquid “with the understanding that the composition may contain solid particulates or other solid matter while still maintaining the overall liquid character of the composition.” Page 7, lines 2 – 3. Cheuk discloses a “meat based material having an essentially solid mass assuming the shape of the container in which it is packed...having visually recognizable discrete meat particles with a moisturized appearance upon slicing the pet food mass after the departure from the said container.” Para [0003]. Cheuk specifically states “[t]he final mixture is filled into cans, which are then sealed and sterilized. In this case, the product produced a solid mass with recognizable discrete meat particles with a moisturized appearance.” Para [0049]. As best understood by Applicants, Cheuk, therefore, teaches a solid mass and not a gravy composition. As Cheuk fails to teach each and every element of the claims, Cheuk cannot be said to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

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Rejection Under 35 U.S.C. § 103(a) Over Farag in view of Food, 2705 and 66

Claims 1, 2, 7 – 9, 14, 15, and 18 – 21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Farag in view of <http://en.wikipedia.org/wiki/Food> (“Food”), http://web.archive.org/web/*/http://www.peteducation.com/article.cfm?clk=1&cat=1399&articleid=2705 (“2705”) and <http://dictionary.reference.com/search?q=companion&r=66> (“66”). Applicants respectfully traverse this rejection.

Farag is directed to “[a] bland food supplement which can be used as a filler, extender, or protein binder in a variety of food products is made from water-extracted vegetable pulp such as sugar beet pulp.” *Abstract*. Food is directed to a definition of food as provided on Wikipedia.org and states “[f]ood is any substance that can be consumed, including liquid drinks. Food is the main source of energy and of nutrition for animals, and is usually of animal or plant origin.” 2705 is directed to “Beet Pulp: Its Benefit in Pet Food.” 66 is directed to a definition of companion as provided on dictionary.reference.com and states “companion a. A person who accompanies or associates with another; a comrade. b. A domestic partner. 2. A person employed to assist, live with, or travel with another. 3. One of a pair or set of things; a mate.” The combination of Farag with Food, 2705 and 66, however, fails to render the claims of the current application obvious.

Farag, Food, 2705 and 66, either alone or in combination, fail to teach a gravy composition adapted for use by a companion animal. The claims of the current application are directed to, *inter alia*, a composition that is a gravy. The composition of Farag is dry and quickly swells in hot or cold aqueous systems, thereby creating a filling and thickening material. Col. 1, lines 54 – 62. The Office states that “it would have been obvious...to modify the composition taught by Farag by making a gravy from a composition comprising sugar beet pulp...because Farag expressly teaches that sugar beet pulp can be included in gravies.” As best understood by Applicants, Farag teaches that a “food supplement produced in according with this invention comprises from about 4% to about 8% moisture...” Col. 3, lines 38 – 40. Farag further states that the “dried product quickly swells in hot or cold aqueous systems to create filling material usable in a number of food products...” Col. 3, lines 42 – 45. As best understood by Applicants, Farag

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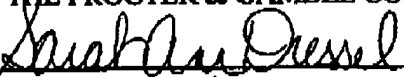
merely teaches that such the disclosed dry, powdered composition is used as a "filling material." Col. 3, lines 42 - 49. Farag, however, does not teach that the composition is a gravy composition itself nor does Farag provide any reasonable expectation of success in modifying the composition from a dry, powdered form to a gravy. Farag, Food, 2705 and 66, either alone or in combination, fail to provide for a gravy composition adapted for use by a companion animal. As noted, Farag fails to provide a gravy composition. Farag, Food, 2705 and 66, either alone or in combination, fail to provide a reasonable expectation of success in modifying the composition of Farag in order to arrive at the claimed composition. Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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